IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 5506 of 2005(E)

PETITIONER:
---

1. PRIVATE SCHOOL VOCATIONAL LECTURERS'ASSN
REP.BY ITS SECRETARY, RAJAN T.,AGED 38 YEARS,
S/O.K.THULASEEDHARAN, NOW R/AT THULASIMANDIRAM,
KARUVELIL P.O., EZHUKONE (VIA),KOLLAM AND NOW
WORKING AS VOCATIONAL LECTURER, K.R.K.P.M. V.H.S.
SCHOOL, KADAMBANADU SOUTH P.O., ADOOR.

2. P.SREELAKSHMI,
NOW WORKING AS VOCATIONAL LECTURER IN V.H.S.S.
MANNADI, ADOOR.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:
---

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF VOCATIONAL HIGHER SECONDARY
EDUCATION, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. SALIM P.A

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: True copy of circular No. c1/2212/89 dated 20.9.1989

Ext.P2: True copy of Circular No.c1/6397/99 dated 14.7.1999

Ext.P3: True copy of G.O. (Ms) No. 53/91/G.Edn dated 30.3.1991

Ext.P4: True copy of the representation from the petitioners to Secretary, General Education Department , Tvm. dated 3.7.2003.

Ext.P5: True copy of Judgment in W.P(C) No. 26788 of 2003 dated 18.9.2003

Ext.P6: True copy of G.O dated 23.1.2004 (G.O.(Rt) No. 415/04/G1 Edn)

Ext.P7: An extract of portion of the draft rules

//True copy//

es

K.BALAKRISHNAN NAIR, J.

WP(C) No.5506 of 2005-E

Judgment

The first petitioner is an Association of Vocational Lecturers of private schools. The second petitioner is one of its members. They are aggrieved by the re-designation of the post of Headmaster of their school as Principal. According to them, the senior-most among the qualified Vocational Lecturers should be appointed as the Principal of the Vocational Higher Secondary Wing. Claiming this relief, they have preferred Ext.P4 representation before the Government. This Court, by Ext.P5 Judgment, directed the Government to consider the said representation. Pursuant to the said direction from this Court, the Government issued Ext.P6 order dated 23.01.2004. The Government said that the question of framing rules for the Vocational Higher Secondary School Teachers in the private sector can be undertaken only after the Special Rules for the Vocational Higher Secondary School teachers in the Government sector are framed. Later, the Government published Ext.P7 draft Rules, which were to be included as Chapter XXXIII in the KER. The said Rules provide for the methods of appointment and the qualifications of Teachers, Instructors and Non-teaching Staff in the aided Vocational Higher Secondary Schools. Principal is defined in the said draft Rules in Rule 1(f), which

reads as follows :

> *"'Principal' means the Headmaster of an aided school who is re-designated to function as Principal of the Vocational Higher Secondary School."*

The petitioners are aggrieved by the above quoted clause and therefore, this Writ Petition is filed, seeking the following reliefs :

> *"i. to call for the entire records leading upto Exhibit P7 and to quash Clause 1(f) to the effect that Principal means the Headmaster of an aided school, who is re-designated to function as Principal of the Vocational Higher Secondary School by the issuance of a writ of certiorari or any other writ, direction or order.*
>
> *ii. to issue a writ of mandamus compelling the respondents to post the senior-most qualified Vocational Lecturer working in Vocational Higher Secondary School as its Principal being the academic and administrative head by suitably amending the Rules or by the issuance of separate executive orders in that regard."*

The petitioners submit, the Rules must be framed in parity with the Rules in Chapter XXXII, governing appointment to various posts under the aided higher secondary schools.

2. The 1st respondent has filed a counter affidavit in which it is pointed out that Ext.P7 is only the draft Rules. Thereafter, the Government have heard the Organisations of Teachers and taking into account their suggestions, the Director of Vocational Higher Secondary Schools has been directed to re-draft the Rules. The fresh draft Rules are awaited by the Government, it is submitted.

3. The first prayer is to quash the clause, defining the term 'Principal' of Ext.P7 draft Rules. The challenge against draft Rules is not maintainable. Even assuming they are notified Rules, still, the prayer for issuing a certiorari to quash the statutory Rules is quite inappropriate. See the decision of the Division Bench of this Court in **Murali v. Returning Officer** (2001(1) KLT 854). Since Ext.P7 is only draft Rules, the challenge against the same is repelled.

4. The second prayer is to issue a mandamus to the Government to frame the Rules appropriately. The said prayer is also unsustainable. In view of the decision of the Apex Court in **Narinder Chand Hemraj v. Union Territory of Himachal Pradesh** (AIR 1971 SC 2399), no court can issue a direction to the

Legislature or its delegate to frame a legislation or a subordinate legislation. In the result, the Writ Petition fails and it is dismissed.

07.09.2007 **K.BALAKRISHNAN NAIR,JUDGE**

sta